BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 4594 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

ELMER E. PAULSEN
S.S.A. No.

PRECEDENT
BENEFIT DECISION
No. P-B-171

FORMERLY
BENEFIT DECISION
No. 4594

The above-named claimant on June 11, 1947, appealed from the decision of a Referee (SF-769) which held that the claimant was not available for work as required by Section 57(c) of the Unemployment Insurance Act [now section 1253(c) of the Unemployment Insurance Code] from January 23, 1947, through February 19, 1947.

Based on the record before us, our statement of fact, reason for decision and decision are as follows:

STATEMENT OF FACT

Prior to filing a claim for benefits, the claimant was last employed for five weeks in San Francisco by a steel foundry as an electric crane operator to replace the regular crane operator who was on vacation. The claimant received a salary of $1.30 per hour for a forty-hour week and double time for overtime. He was laid off on December 21, 1946, when the regular employee returned to work. The claimant has had approximately four years' previous experience as a crane operator.

On January 9, 1947, the claimant registered as a crane operator and filed a claim for benefits in the San Francisco industrial office of the Department of Employment. On March 21, 1947, the Department issued a determination which held the claimant ineligible for benefits from January 23, 1947, through February 19, 1947,

on the ground that he was not available for work as required by Section 57(c) of the Unemployment Insurance Act. The claimant appealed and a Referee affirmed the determination.

On January 25, 1947, the claimant, upon the advice of a friend in Utah, left San Francisco, and traveled to Salt Lake City, Utah, to seek work. The claimant testified that prior to leaving for Utah, he applied for employment through his local union and was informed that very few openings occur for crane operators in the San Francisco area during the winter months. He notified the local employment office in San Francisco of his intentions to leave California and seek work in Utah. The claimant certified for benefits in the local office in Salt Lake City on January 30, 1947, February 6, 1947, and on February 13, 1947, he registered for employment as a casual worker. During the following week he returned to San Francisco, and on March 20, 1947, he obtained employment in that area as a crane operator. The claimant was so employed on May 1, 1947, the date of the hearing before a Referee.

The record shows that work within the claimant's qualification as a crane operator exists in the locality of Salt Lake City. The claimant applied for such work at the mills and foundries in that area. He also applied for employment at a mill in Provo, Utah, which is located forty miles from Salt Lake City. As far as the record discloses the claimant placed no unreasonable restrictions on hours, wages, or other working conditions acceptable to him.

REASON FOR DECISION

The availability for work of a claimant who is only in a community for a short period such as in the instant case must be determined by the application of the same criteria used in establishing compliance with the statutory requirement in other cases; i.e. a showing must be made that the claimant has been genuinely in the labor market, ready, willing, and able to accept suitable employment without unreasonable restrictions or limitations.

We are of the opinion that the evidence in this case does not justify the conclusion of the Referee that the claimant did not meet the statutory requirements of availability for work. The record shows that a labor market exists for work within the claimant's previous experience and training as a crane operator in the area of Salt Lake City and that the claimant on his own initiative applied at several places for such work. The claimant placed no unreasonable restrictions on hours, wages, or other working conditions acceptable to him. Under all the facts of this case, we conclude that the claimant was in an active labor market where he could reasonably expect to obtain employment and that he was available for work within the meaning of Section 57(c) of the Act during the period involved in this appeal.

DECISION

The decision of the Referee is reversed. Benefits are allowed for the period from January 23, 1947, to February 19, 1947, provided the claimant is otherwise eligible.

Sacramento, California, January 6, 1976

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent for the reasons set forth in my dissenting opinion in Appeals Board Decision No. P-B-168.

The instant case demonstrates the points set forth in my dissent in Appeals Board Decision No. P-B-168. The instant case states on its face that the decision is based on "the record before us." But there is no record before us, all records of Benefit Decisions having been irrevocably destroyed years ago. The first paragraph on page three of the majority decision sets forth an interpretation of "the evidence in this case," however, not one member who signed the majority opinion reviewed the record or has the slightest idea what evidence was actually produced in this case.

The decision in the instant matter, on its face, violates the injunction set forth by the Legislature in section 1336 of the Unemployment Insurance Code that the Board adopt its decisions on the basis of the evidence. Here we have no evidence on which to base our decision, only the hearsay conclusions of former Board members. Such is insufficient to sustain an administrative decision under section 1094.5 of the Code of Civil Procedure.

Here, too, the majority would permit no discussion of the merits before adopting this decision, which is plainly violative of due process of law.

HARRY K. GRAFE